

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

BECKY L. VOGEL,	§	
Plaintiff,	§	
	§	3:12-CV-0471-D (BK)
VS.	§	
	§	
FAMILY DREAM LLC, AMERICAN,	§	
Defendant.	§	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b) and Special Order 3, this case was automatically referred to the United States Magistrate Judge. For the reasons that follow, it is recommended that this action be dismissed without prejudice for want of prosecution.

I. BACKGROUND

Plaintiff filed a *pro se* complaint and motion for temporary restraining order (TRO) against Defendant Family Dream LLC, American. The Court denied the motion for TRO, but issued a notice of deficiency and order requiring, no later than March 16, 2012, (1) an amended complaint in compliance with Rule 8(a) of the Federal Rules of Civil Procedure, and (2) additional financial information in support of Plaintiff's *in forma pauperis* motion. The orders were returned to the Court as undeliverable on February 28 and March 1, 2012, and, as of the filing of this recommendation, Plaintiff has failed to apprise the Court of her new address. The Court is not required to delay disposition in this case until such time as Plaintiff provides her current address.

II. DISCUSSION

Rule 41(b) of the Federal Rules of Civil Procedure allows a court to dismiss an action *sua*

sponte for failure to prosecute or for failure to comply with the federal rules or any court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998). “This authority flows from the court’s inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

Plaintiff has been given ample opportunity to submit additional financial information and file a complaint in compliance with Rule 8(a). She has impliedly refused or declined to do so, and has also failed to keep the Court apprised of her address change. Therefore, this action should be dismissed without prejudice for lack of prosecution. *See* FED. R. CIV. P. 41(b) (an involuntary dismissal “operates as an adjudication on the merits,” unless otherwise specified).¹

III. RECOMMENDATION

For the foregoing reasons, it is recommended that the District Court **DISMISS** this action without prejudice for want of prosecution and **DENY** Plaintiff’s motion to proceed *in forma pauperis* as moot.

SIGNED March 23, 2012.


RENÉE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

¹Absent a proper complaint, the Court cannot determine when the events at issue in this case occurred. Thus, it is unclear whether the higher standard for dismissal with prejudice for want of prosecution would be applicable in this case. *See Callip v. Harris County Child Welfare Department*, 757 F.2d 1513, 1519 (5th Cir. 1985).

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).



RENÉE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE